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December 15, 2008

BY HAND

Jeff S. Jordan, Esq.
Supervisory Attorney
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6104

Dear Mr. Jordan:

We are writing this letter on behalf of Michael Montagano, Montagano for Congress, Inc., and Joseph Montagano, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by the National Republican Congressional Committee (the "Complainant"). The facts do not support a reason to believe finding in this matter and the Complaint should be dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

Here, the Complainant fails to allege a violation of federal campaign finance law on the part of Respondents. The Complainant merely speculates that Respondents accepted excessive contributions from Joseph Montagano ("Joseph"), the candidate's father, because Joseph co-purchased a home with his newly married son, Michael Montagano ("Michael"). But the facts show that Michael first paid his father to rent the property, and then directly made mortgage payments on the property. Joseph's involvement in the real estate purchase was not only

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consistent with his involvement in Michael's financial affairs before his candidacy, but is also comparable to the assistance many parents provide to their children when making their first home purchase. Moreover, the home purchase was unrelated to the financing of Michael's campaign, and did not result in the transfer of any funds to the campaign. For these reasons, the Commission should find no reason to believe that any violation occurred and dismiss the complaint.

FACTUAL AND LEGAL ANALYSIS

Michael Montagano became a first-time candidate for federal office on May 3, 2007; he won the Democratic nomination for Congress in Indiana's Third District and then lost the general election. Recently married, and already residing in the district, Michael began looking for a home to purchase in his parents' hometown of Bristol, Indiana. He and his wife eventually found a parcel of three lots that was being sold by the Jane McClelland Revocable Trust. One of the lots, Lot 9, included a house; the adjoining lots were Lots 10 and 11. The seller refused to sell the lots separately, and wanted to move forward quickly with the sale of the property. Michael and his father, Joseph, agreed to co-purchase the parcel of three lots, understanding that Michael and his wife would live in the house on Lot 9, and that Lots 10 and 11 would be conveyed to Joseph solely.

The total purchase price for the three lots was \$326,000. Michael and Joseph signed a purchase agreement for the property on June 30, 2007. See Exhibit A. Because the seller wanted to finalize the purchase before Michael and his father could obtain a mortgage, Joseph obtained a \$226,000 bridge loan from Lake City Bank. The loan was disbursed on July 12, 2007, and due on September 12, 2007. Lake City Bank later extended the term of the loan to October 12, 2007.

Michael and Joseph closed on the property on July 13, 2007. See Exhibit B. Joseph paid to the Jane McClelland Revocable Trust \$226,000 from the proceeds of the bridge loan, and paid the balance due from his personal funds. The \$226,000 represented the amount attributable to Lot 9, where Michael would live; the balance paid from Joseph's personal funds represented the amounts attributable to Lots 10 and 11. As they had agreed, immediately after purchasing the property, Michael and Joseph conveyed Lots 10 and 11 to Joseph solely. See Exhibit C. Michael and Joseph remain co-owners of Lot 9, and Joseph is the sole owner of Lots 10 and 11.

Michael and his wife made \$1,500 payments to Joseph on August 29, 2007 and September 20, 2007 for their use of Lot 9 and its house. See Exhibit D. On October 11, 2007, Michael and Joseph obtained a mortgage on Lot 9 from Lake City Bank in the amount of \$226,000. See Exhibit E. All of the mortgage proceeds were used to pay off the Lake City Bank bridge loan; none of the proceeds was made available to the campaign. See Exhibit F. Pursuant to the mortgage note, Michael and his wife have made monthly mortgage payments to Lake City Bank in the amount of \$1,465.83 since December 2007. See Exhibit G.

Although Joseph is a co-owner of Lot 9, he has not paid for any of the monthly mortgage payments on Lot 9. Michael relied instead on his own savings and his spouse's income to make the mortgage payments. Joseph's involvement in the purchase is consistent with the sort of financial assistance that he had provided to Michael before his candidacy. For example, Joseph is listed as a co-lessee on the lease for the Hummer H3 that was referenced in the Complaint. See Compl. at 1. But the vehicle was first leased on December 28, 2006 – several months before Michael became a candidate. See Exhibit H. Joseph also had paid for a car previously used by Michael, and for a portion of Michael's living expenses while Michael was in law school.

The Act prohibits a candidate from using campaign funds to pay for personal use expenses. See 2 U.S.C. § 439a; 11 C.F.R. § 113.1. Although third party payments of the candidate's personal use expenses are generally considered contributions under the Act, such payments are permitted if they would have been made irrespective of the candidacy. See 11 C.F.R. § 113.1(g)(6). Moreover, a family member may pay for a candidate's living expenses if the payments are made from a joint account held with the candidate or "if the expenses were paid by the family member before the candidate became a candidate." 11 C.F.R. § 100.153. In addition, a candidate's personal funds are defined to include "gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle." 11 C.F.R. § 100.33(b)(6); see also FEC Adv. Op. 1988-7.

The Commission has found reason to believe when family members have provided candidates with funds to be used in their campaigns, in contravention of the normal limits. For example, in MUR 5453, the respondent made an unprecedented \$300,000 gift to his son-in-law that was used as direct cash collateral for a bank loan to the son-in-law's campaign committee. See MUR 5453 (Salvatore Trovato) Conciliation Agreement (Dec. 16, 2005); General Counsel's Brief at 2-3 (May 18, 2005). In MUR 5138, the parents established a trust that distributed \$1,000,000 to their son and the son immediately transferred \$525,000 of that amount to his campaign committee. See MUR 5138 (Ferguson for Congress), Conciliation Agreement (May 14, 2003); Commissioners Smith and Toner, Statement of Reasons at 2-3 (June 12, 2003).

But in other matters involving third-party payments for candidate personal expenses, the Commission has taken no action. In MUR 4960, cited above, the Commission found no reason to believe that Senator Hillary Rodham Clinton violated the Act against allegations that third parties had supported the purchase and furnishing of her Chappaqua, New York home. Among other things, commissioners relied on the lack of any evidence tendered in the complaint that "the costs of the Clintons' move to New York are in connection with Mrs. Clinton's Senate election," even though it was "true that Mrs. Clinton needed to establish residency in New York in order to run for the Senate there ..." MUR 4960 (Clinton for U.S. Senate Exploratory Committee), Statement of Reasons at 2 (Dec. 21, 2001). In MUR 5321, a mother made an

Jeff S. Jordan, Esq.
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\$800,000 gift to her daughter, and the daughter then lent the full amount of the gift to her campaign. The Commission deadlocked, with one commissioner wondering whether "the corruption potential of such transfers is so insignificant as to make penalties for them unnecessary." See MUR 5321 (Minnesotans for Janet Robert), Commissioner Mason, Statement of Reasons, (July 13, 2004); General Counsel's Report #2 at 5 (May 17, 2004).

Here, with a history of previous parental support, a father simply helped his newlywed son facilitate a home purchase while retaining an interest in the house for himself. The only assistance that Joseph provided to Michael was for a real estate purchase that would have been made irrespective of candidacy. See 11 C.F.R. § 113.1(g)(6). No mortgage proceeds or other funds were provided to the campaign as a result of Joseph's support. And Michael and his wife have paid for the use of the home at all times.

Thus, the Complaint does not support a finding of reason to believe that Respondents committed a violation of federal campaign finance law. Pursuant to 11 C.F.R. § 111.4(d), Respondents respectfully request that the Commission immediately dismiss the Complaint and take no further action.

Very truly yours,



Brian G. Svoboda
Kate Sawyer Keane

29044244729



SALES DISCLOSURE FORM
State Form 4821 (7/4/7-00)

Prescribed by Department of Local Government Finance
Pursuant to IC 8-1.1-5.5

PRIVACY NOTICE: The telephone numbers of the parties on this form are confidential according to IC 8-1.1-5.5-3(d).



Parcel Number(s) (Show additional parcels on separate sheet if necessary.)

20-07-09-104-001.000-019

Acreage or Lot Size

0

20-07-09-104-002.000-019

0

20-07-09-104-003.000-019

0

Address
9822 Dana Drive

of Parcels

0

City, Town, or Post Office
Brazil

State ZIP Code
IN 46507

Tax Mailing Address (if other than property address)

City, Town, or Post Office

State ZIP Code

Legal Description

Parcel E: Lots 9 and 10 as designated on the recorded 2nd Replat of Amberwood Hills, a subdivision in Jefferson Township; said Replat being recorded in Plat Book 14, page 96 in the Office of the Recorder of Elkhart County, Indiana.

Identify all conditions/items that apply

- ☐ 1-Buyer is an adjacent property owner
- ☐ 2-Vacant Land
- ☐ 3-Exchange for other real property ("Trade")
- ☐ 4-Seller Paid Parties; amount if applicable
\$. . .
- ☐ 5-Change planned in the primary use of the property? Describe in special circumstances.
- ☐ 6-Existence of family or business relationship between buyer and seller
- ☐ 7-Lease Contract Detail: _____
- ☐ 8-Personal property included in transfer; amount if applicable
\$. . .
- ☐ 9-Significant physical changes to property between March 1 and date of sale
- ☐ 10-Non-Warranty deed; specify type _____
- ☐ 11-Partial Interest. Describe in special circumstances.

NOTE: If Items 12-21 apply, filers are not subject to disclosure filing fee.

- ☐ 12-Security interest documents such as mortgages or trust deeds.
- ☐ 13-Lease less than 90 years
- ☐ 14-Document resulting from foreclosure, or express threat of foreclosure, divorce court order, condemnation, probate or other judicial proceedings.
- ☐ 15-Agreements and other documents for mergers, consolidations, and incorporations
- ☐ 16-Quitclaim deeds not serving as a source of title
- ☐ 17-Documents involving the partition of land between tenants in common, joint tenants, or tenants by the entirety.
- ☐ 18-Transfer to a charity, not-for-profit or government institution.
- ☐ 19-Transfer for no or discounted consideration, or gift
- ☐ 20-Rerecording to correct prior recorded document
- ☐ 21-Easements, Right-of-way grants

Contract Date (MM/DD/YYYY)

01/01/00

Sales Price

\$ 326,000

Describe any unusual or special circumstances related to this sale, including the specification of any less-than-ordinary overvalued interest and terms of sale, funding.

Seller 1 - Name or Entity as appears on deed
 Jane McClelland Revocable Trust

Address

City, Town, or Post Office

State

ZIP Code

Seller 2 - Name or Entity as appears on deed
 Donald E. McClelland and E. Jane McClelland

Address

City, Town, or Post Office

State

ZIP Code

Preparer Name and Address

McClintock Title Company, a division of First American Title
 200 E. State, Ste. A

Preparer Phone

574-2913-9111

Buyer 1 - Name or Entity as appears on deed

Michael Montague

Address

City, Town, or Post Office

State

ZIP Code

Will this property be the buyer's primary residence?

☐ Yes

☐ No

Buyer 2 - Name or Entity as appears on deed

Joseph Montague

Address

City, Town or Post Office

State

ZIP Code

Under penalty of perjury, I hereby certify that this Sales Disclosure, to the best of my knowledge and belief, is true, correct and complete as required by law, and is prepared in accordance with IC 6-4.1-5.5, "Real Property Sales Disclosure Act".

Signature of Seller

[Signature] as agent for seller

Signature of Buyer

[Signature]

Seller Sign Date (MM/DD/YYYY)

07/03/2007

Seller Phone

574-2913-9111

Buyer Sign Date (MM/DD/YYYY)

07/03/2007

Buyer Phone

574-2913-9111

AUDITOR'S FILE STAMP

Completion ☐ Yes ☐ No

Date Entered in Transfer Book

07/03/2007

County Assessor or other assessing official must verify and complete the following information.

☐ Significant physical changes to property between March 1 and date of sale

\$ 000 . 000 . 000

AV LAND

Property changes since last sale

\$ 000 . 000 . 000

AV IMPV

\$ 000 . 000 . 000

AV TOTAL

Will Sale

NEIGHBORHOOD CODE

257823

29044244731



SALES DISCLOSURE FORM
State Form 48021 (08/7-05)

Prescribed by Department of Local Government Finance
Permitted to IC 6-1.1-5.5

PRIVACY NOTICE: The telephone numbers of the parties on this form are confidential according to IC 6-1.1-5.5-3(d).



Parcel Number(s) (Show additional parcels on separate sheet if necessary.)

20-07-09-104-002.000-019

Acres or Lot Size

Part of Parcel
(acre)

20-07-09-104-003.000-019

0

0

0

Address

58022 Dana Drive

City, Town, or Post Office

Bristol

State

ZIP Code

IN 46107

Tax Billing Address (if other than property address)

City, Town, or Post Office

State

ZIP Code

Legal Description

Parcel 1: Lots 9 and 10 as designated on the recorded 2nd Replat of Amberwood Hills, a subdivision in Jefferson Township; said Replat being recorded in Plat Book 14, page 96 in the Office of the Recorder of Elkhart County, Indiana.

Identify all conditions/items that apply

NOTES: If Items 13-21 apply, there are not subject to disclosure filing fee.

- ☐ 1-Buyer is an adjacent property owner
☐ 2-Vacant Land
☐ 3-Exchange for other real property ("Trade")
☐ 4-Seller Paid Fees; amount if applicable

\$. . .

- ☐ 5-Change planned in the primary use of the property? Describe in special circumstances.
☐ 6-Existence of family or business relationship between buyer and seller
☐ 7-Land Contract Date: _____
☐ 8-Partial property included in transfer; amount if applicable
☐ 9-Significant physical changes to property between March 1 and date of sale
☐ 10-Non-Warranty deed; specify type _____
☐ 11-Partial interest. Describe in special circumstances.

\$. . .

- ☐ 12-Security interest documents such as mortgages or trust deeds.
☐ 13-Leases less than 99 years
☐ 14-Document resulting from foreclosures, or express threat of foreclosure, divorce court order, condemnation, probate or other judicial proceedings.
☐ 15-Agreements and other documents for mergers, consolidations, and incorporations
☐ 16-Outchain deeds not serving as a source of title
☐ 17-Documents involving the partition of land between tenants in common, joint tenants, or tenants by the entirety.
☐ 18-Transfer to a charity, not-for-profit or government institution.
☐ 19-Transfer for no or discounted consideration, or gift
☐ 20-Rerecording to correct prior recorded document
☐ 21-Easements, Right-of-way grants

Contract Date (MM/DD/YYYY)

Sales Price

11/11/2007

\$ 100,000.00

Describe any unusual or special circumstances related to this sale, including the specification of any law that creates a conflict of interest and terms of any financing.

INDIANA SALES DISCLOSURE FORM

Page 2

Seller 1 - Name or Entity as appears on deed

Michael Montano

Address

City, Town, or Post Office

State

ZIP Code

Seller 2 - Name or Entity as appears on deed

Joseph Montano

Address

City, Town, or Post Office

State

ZIP Code

Preparer Name and Address

Montano Title Company, a division of First American Title
2001 E. Bristol, Ste. A

Preparer Phone

574-293-9111

Buyer 1 - Name or Entity as appears on deed

Joseph Montano

Address

City, Town, or Post Office

State

ZIP Code

Will this property be the buyer's primary residence?

☐ Yes

☐ No

Buyer 2 - Name or Entity as appears on deed

Address

City, Town or Post Office

State

ZIP Code

Under penalty of perjury, I hereby certify that this Sales Disclosure, to the best of my knowledge and belief, is true, correct and complete as required by law, and is prepared in accordance with IC 31-1.1-1.1, "Real Property Sales Disclosure Act".

Signature of Seller

Seller Sign Date
(MM/DD/YYYY)

Seller Phone

Signature of Buyer

Buyer Sign Date
(MM/DD/YYYY)

Buyer Phone

AUDITOR'S FILE STAMP

Completion ☐ Yes ☐ No

Date Entered in Transfer Book

County Assessor or other assessing official must verify and complete the following information.

☐ Significant physical changes to property between March 1 and date of sale

\$. .

AV LAND

Property description
Total Acres (to 2 decimal places)

\$. .

AV IMPV

\$. .

AV TOTAL

257823

NEIGHBORHOOD CODE